

By: Nelson, et al.

S.B. No. 643

Substitute the following for S.B. No. 643:

By: Rose

C.S.S.B. No. 643

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of individuals with mental retardation; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 261.105, Family Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Notwithstanding Subsections (b) and (c), if a report under this section relates to a child with mental retardation receiving services in a state supported living center as defined by Section 531.002, Health and Safety Code, or the ICF-MR component of the Rio Grande State Center, the department shall proceed with the investigation of the report as provided by Section 261.404.

SECTION 2. Section 261.109(b), Family Code, is amended to read as follows:

(b) An offense under this section is a Class A [~~B~~] misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the child was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

SECTION 3. Section 261.401(b), Family Code, is amended to read as follows:

1 (b) Except as provided by Section 261.404, a [A] state
2 agency that operates, licenses, certifies, or registers a facility
3 in which children are located or provides oversight of a program
4 that serves children shall make a prompt, thorough investigation of
5 a report that a child has been or may be abused, neglected, or
6 exploited in the facility or program. The primary purpose of the
7 investigation shall be the protection of the child.

8 SECTION 4. Section 261.404, Family Code, is amended to read
9 as follows:

10 Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN
11 WITH MENTAL ILLNESS OR [~~IN FACILITIES UNDER DEPARTMENT OF MENTAL~~
12 ~~HEALTH AND~~] MENTAL RETARDATION. (a) The department shall, to the
13 extent provided by this section, investigate a report of abuse,
14 neglect, or exploitation of a child receiving services:

15 (1) in a facility operated by the [~~Texas~~] Department
16 of Aging and Disability Services or a mental health facility
17 operated by the Department of State [~~Mental~~] Health Services [~~and~~
18 ~~Mental Retardation~~];

19 (2) in or from a community center, a local mental
20 health authority, or a local mental retardation authority; [~~or~~]

21 (3) through a program providing services to that child
22 by contract with a facility operated by the [~~Texas~~] Department of
23 Aging and Disability Services, a mental health facility operated by
24 the Department of State [~~Mental~~] Health Services [~~and Mental~~
25 ~~Retardation~~], a community center, a local mental health authority,
26 or a local mental retardation authority;

27 (4) from a provider of home and community-based

1 services who contracts with the Department of Aging and Disability
2 Services; or

3 (5) in a facility licensed under Chapter 252, Health
4 and Safety Code.

5 (b) The department shall investigate the report under rules
6 developed by the executive commissioner of the Health and Human
7 Services Commission with the advice and assistance of [~~jointly~~
8 ~~between~~] the department, [~~and~~] the [~~Texas~~] Department of Aging and
9 Disability Services, and the Department of State [~~Mental~~] Health
10 Services [~~and Mental Retardation~~].

11 (c) If a report under this section relates to a child with
12 mental retardation receiving services in a state supported living
13 center or the ICF-MR component of the Rio Grande State Center, the
14 department shall, within one hour of receiving the report:

15 (1) notify the facility in which the child is
16 receiving services of the allegations in the report;

17 (2) forward a copy of the initial intake report to the
18 commission's office of inspector general for evaluation and
19 investigation as provided by Subchapter D, Chapter 555, Health and
20 Safety Code; and

21 (3) place the department's investigation under this
22 section on hold.

23 (d) The department is required to proceed with and complete
24 an investigation of a report related to a child described by
25 Subsection (c) only if, not more than 24 hours after the department
26 forwards a report to the commission's office of inspector general,
27 the office of inspector general notifies the department that the

1 office of inspector general does not have cause to investigate a
2 possible criminal offense related to the report.

3 (e) The department may provide assistance, including
4 assistance in conducting interviews, to the commission's office of
5 inspector general when the office of inspector general conducts an
6 investigation of a report of abuse, neglect, or exploitation at a
7 state supported living center or the ICF-MR component of the Rio
8 Grande State Center.

9 (f) If during the course of the department's investigation
10 of reported abuse, neglect, or exploitation a caseworker of the
11 department or the caseworker's supervisor has cause to believe that
12 a child with mental retardation described by Subsection (c) has
13 been abused, neglected, or exploited by another person in a manner
14 that constitutes a criminal offense under any law, including
15 Section 22.04, Penal Code, the caseworker or supervisor shall:

16 (1) immediately notify the commission's office of
17 inspector general;

18 (2) in a timely manner provide the commission's office
19 of inspector general with the evidence collected by the department
20 during the investigation; and

21 (3) place the department's investigation on hold and
22 proceed with the investigation only in accordance with Subsection
23 (d).

24 (g) The definitions of "abuse" and "neglect" prescribed by
25 Section 261.001 do not apply to an investigation under this
26 section.

27 (h) [~~d~~] In this section:

1 (1) [~~r~~] "Community [~~community~~] center," "local mental
2 health authority," [~~and~~] "local mental retardation authority," and
3 "state supported living center" have the meanings assigned by
4 Section 531.002, Health and Safety Code.

5 (2) "Provider" has the meaning assigned by Section
6 48.351, Human Resources Code.

7 SECTION 5. Subchapter F, Chapter 411, Government Code, is
8 amended by adding Section 411.1144 to read as follows:

9 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
10 INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE
11 SUPPORTED LIVING CENTERS. (a) The Department of State Health
12 Services and the Department of Aging and Disability Services are
13 entitled to obtain from the department criminal history record
14 information maintained by the department that relates to a person:

15 (1) who is:

16 (A) an applicant for employment with the agency;

17 (B) an employee of the agency;

18 (C) a volunteer with the agency; or

19 (D) an applicant for a volunteer position with
20 the agency; and

21 (2) who would be placed in direct contact with a
22 resident or client of a state supported living center or the ICF-MR
23 component of the Rio Grande State Center.

24 (b) Criminal history record information obtained by an
25 agency under Subsection (a) may not be released or disclosed to any
26 person except:

27 (1) on court order;

1 (2) with the consent of the person who is the subject
2 of the criminal history record information;

3 (3) for purposes of an administrative hearing held by
4 the agency concerning the person who is the subject of the criminal
5 history record information; or

6 (4) as provided by Subsection (c).

7 (c) An agency is not prohibited from releasing criminal
8 history record information obtained under Subsection (a) or (d) to
9 the person who is the subject of the criminal history record
10 information.

11 (d) Subject to Section 411.087, the Department of State
12 Health Services and the Department of Aging and Disability Services
13 are entitled to:

14 (1) obtain through the Federal Bureau of Investigation
15 criminal history record information maintained or indexed by that
16 bureau that pertains to a person described by Subsection (a); and

17 (2) obtain from any other criminal justice agency in
18 this state criminal history record information maintained by that
19 criminal justice agency that relates to a person described by
20 Subsection (a).

21 (e) This section does not prohibit an agency from obtaining
22 and using criminal history record information as provided by other
23 law.

24 SECTION 6. Chapter 531, Government Code, is amended by
25 adding Subchapter U to read as follows:

1 SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH
2 DEVELOPMENTAL DISABILITIES

3 Sec. 531.851. MORTALITY REVIEW. (a) The executive
4 commissioner shall establish an independent mortality review
5 system to review the death of a person with a developmental
6 disability who, at the time of the person's death:

7 (1) resided in or received services from:

8 (A) an intermediate care facility for persons
9 with mental retardation (ICF-MR) operated or licensed by the
10 Department of Aging and Disability Services or a community center;
11 or

12 (B) the ICF-MR component of the Rio Grande State
13 Center; or

14 (2) received residential assistance through a Section
15 1915(c) waiver program serving individuals who are eligible for
16 ICF-MR services in a residence in which residential assistance is
17 provided to three or more persons and in which the waiver program
18 provider has a property interest.

19 (b) A review under this subchapter must be conducted in
20 addition to any review conducted by the facility in which the person
21 resided or the facility, agency, or provider from which the person
22 received services. A review under this subchapter must be
23 conducted after any investigation of alleged or suspected abuse,
24 neglect, or exploitation is completed.

25 (c) The executive commissioner shall contract with a
26 patient safety organization certified in accordance with 42 C.F.R.
27 Part 3, as effective on January 19, 2009, to conduct independent

1 mortality reviews required by this subchapter. The contract must
2 require the patient safety organization to conduct an independent
3 mortality review using a team consisting of:

4 (1) a physician with expertise regarding the medical
5 treatment of individuals with mental retardation;

6 (2) a registered nurse with expertise regarding the
7 medical treatment of individuals with mental retardation;

8 (3) a clinician or other professional with expertise
9 in the delivery of services and supports for individuals with
10 mental retardation; and

11 (4) any other appropriate person as provided by the
12 executive commissioner.

13 (d) The executive commissioner shall adopt rules regarding
14 the manner in which the death of a person described by Subsection
15 (a) must be reported to the patient safety organization by a
16 facility or waiver program provider described by that subsection.

17 (e) To ensure consistency across mortality review systems,
18 a review under this section must collect information consistent
19 with the information required to be collected by any other
20 independent mortality review process established specifically for
21 persons with mental retardation.

22 Sec. 531.852. ACCESS TO INFORMATION. (a) A patient safety
23 organization may request information and records regarding a
24 deceased person as necessary to carry out the patient safety
25 organization's duties. Records and information that may be
26 requested under this section include:

27 (1) medical, dental, and mental health care

1 information; and

2 (2) information and records maintained by any state or
3 local government agency, including:

4 (A) a birth certificate;

5 (B) law enforcement investigative data;

6 (C) medical examiner investigative data;

7 (D) juvenile court records;

8 (E) parole and probation information and
9 records; and

10 (F) adult or child protective services
11 information and records.

12 (b) On request of the patient safety organization, the
13 custodian of the relevant information and records relating to a
14 deceased person shall provide those records to the patient safety
15 organization at no charge.

16 Sec. 531.853. MORTALITY REVIEW REPORT. The patient safety
17 organization shall, to the extent allowed by federal law, submit:

18 (1) to the Department of Aging and Disability
19 Services, the Department of Family and Protective Services, the
20 office of independent ombudsman for state supported living centers,
21 and the commission's office of inspector general a report of the
22 findings of the mortality review; and

23 (2) semiannually to the governor, the lieutenant
24 governor, the speaker of the house of representatives, and the
25 standing committees of the senate and house of representatives with
26 primary jurisdiction over the Department of Aging and Disability
27 Services a report that contains:

1 (A) aggregate information regarding the deaths
2 for which the patient safety organization performed an independent
3 mortality review;

4 (B) trends in the causes of death identified by
5 the patient safety organization; and

6 (C) any suggestions for system-wide improvements
7 to address conditions that contributed to deaths reviewed by the
8 patient safety organization.

9 Sec. 531.854. USE AND PUBLICATION RESTRICTIONS;
10 CONFIDENTIALITY. (a) The commission may use or publish
11 information under this subchapter only to advance statewide
12 practices regarding the treatment and care of individuals with
13 developmental disabilities. A summary of the data in the patient
14 safety organization's reports or a statistical compilation of data
15 reports may be released by the commission for general publication
16 if the summary or statistical compilation does not contain any
17 information that would permit the identification of an individual
18 or that is patient safety work product.

19 (b) Information and records acquired by the patient safety
20 organization in the exercise of its duties under this subchapter
21 are confidential and exempt from disclosure under the open records
22 law, Chapter 552, and may be disclosed only as necessary to carry
23 out the patient safety organization's duties.

24 (c) The identity of a person whose death was reviewed in
25 accordance with this subchapter is confidential and may not be
26 revealed.

27 (d) The identity of a health care provider or the name of a

1 facility or agency that provided services to or was the residence of
2 a person whose death was reviewed in accordance with this
3 subchapter is confidential and may not be revealed.

4 (e) Reports, information, statements, memoranda, and other
5 information furnished under this subchapter and any findings or
6 conclusions resulting from a review by the patient safety
7 organization are privileged.

8 Sec. 531.855. LIMITATION ON LIABILITY. A health care
9 provider or other person is not civilly or criminally liable for
10 furnishing information to the patient safety organization or to the
11 commission for use by the patient safety organization in accordance
12 with this subchapter unless the person acted in bad faith or
13 knowingly provided false information to the patient safety
14 organization or the commission.

15 SECTION 7. Subchapter B, Chapter 252, Health and Safety
16 Code, is amended by adding Section 252.0311 to read as follows:

17 Sec. 252.0311. PERSON INELIGIBLE FOR LICENSE. (a) In this
18 section, "controlling person" means a person who, acting alone or
19 with others, has the ability to directly or indirectly influence,
20 direct, or cause the direction of the management, expenditure of
21 money, or policies of a facility or a person who operates a
22 facility. The term includes:

23 (1) a management company or other business entity that
24 operates or contracts with others for the operation of a facility;

25 (2) a person who is a controlling person of a
26 management company or other business entity that operates a
27 facility or that contracts with another person for the operation of

1 a facility; and

2 (3) any other individual who, because of a personal,
3 familial, or other relationship with the owner, manager, or
4 provider of a facility, is in a position of actual control or
5 authority with respect to the facility, without regard to whether
6 the individual is formally named as an owner, manager, director,
7 officer, provider, consultant, contractor, or employee of the
8 facility.

9 (b) A controlling person described by Subsection (a)(3)
10 does not include an employee, lender, secured creditor, or other
11 person who does not exercise formal or actual influence or control
12 over the operation of a facility.

13 (c) The executive commissioner of the Health and Human
14 Services Commission may adopt rules that specify the ownership
15 interests and other relationships that qualify a person as a
16 controlling person.

17 (d) A person is not eligible for a license or to renew a
18 license if the applicant, a controlling person with respect to the
19 applicant, or an administrator or chief financial officer of the
20 applicant has been convicted of an offense that would bar a person's
21 employment at a facility in accordance with Chapter 250.

22 SECTION 8. Section 252.039, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 252.039. POSTING. Each facility shall prominently and
25 conspicuously post for display in a public area of the facility that
26 is readily available to residents, employees, and visitors:

27 (1) the license issued under this chapter;

1 (2) a sign prescribed by the department that specifies
2 complaint procedures established under this chapter or rules
3 adopted under this chapter and that specifies how complaints may be
4 registered with the department;

5 (3) a notice in a form prescribed by the department
6 stating that inspection and related reports are available at the
7 facility for public inspection and providing the department's
8 toll-free telephone number that may be used to obtain information
9 concerning the facility;

10 (4) a concise summary of the most recent inspection
11 report relating to the facility; ~~and~~

12 (5) a notice providing instructions for reporting an
13 allegation of abuse, neglect, or exploitation to the Department of
14 Family and Protective Services; and

15 (6) a notice that employees, other staff, residents,
16 volunteers, and family members and guardians of residents are
17 protected from discrimination or retaliation as provided by
18 Sections 252.132 and 252.133.

19 SECTION 9. The heading to Subchapter E, Chapter 252, Health
20 and Safety Code, is amended to read as follows:

21 SUBCHAPTER E. INVESTIGATIONS ~~[REPORTS]~~ OF ABUSE,
22 [AND] NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION

23 SECTION 10. Sections 252.121, 252.122, 252.125, and
24 252.126, Health and Safety Code, are amended to read as follows:

25 Sec. 252.121. AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE
26 [DEFINITION]. (a) A person, including an owner or employee of a
27 facility, who has cause to believe that ~~[In this subchapter,~~

1 ~~"designated agency" means an agency designated by a court to be~~
2 ~~responsible for the protection of] a resident is being or has been~~
3 ~~subjected to [who is the subject of a report of] abuse, [or]~~
4 ~~neglect, or exploitation shall report the suspected abuse, neglect,~~
5 ~~or exploitation to the Department of Family and Protective~~
6 ~~Services, as required by Chapter 48, Human Resources Code, or~~
7 ~~Chapter 261, Family Code, as appropriate. The Department of Family~~
8 ~~and Protective Services shall investigate the allegation of abuse,~~
9 ~~neglect, or exploitation in the manner provided by Chapter 48,~~
10 ~~Human Resources Code, or Section 261.404, Family Code, as~~
11 ~~applicable.~~

12 (b) If the department receives a report of suspected abuse,
13 neglect, or exploitation of a resident of a facility licensed under
14 this chapter, the department shall immediately refer the report to
15 the Department of Family and Protective Services for investigation.

16 Sec. 252.122. NOTIFICATION OF DUTY TO REPORT ~~[REPORTING OF]~~
17 ~~ABUSE, [AND] NEGLECT, AND EXPLOITATION. [(a) A person, including~~
18 ~~an owner or employee of a facility, who has cause to believe that~~
19 ~~the physical or mental health or welfare of a resident has been or~~
20 ~~may be adversely affected by abuse or neglect caused by another~~
21 ~~person shall report the abuse or neglect to the department, to a~~
22 ~~designated agency, or to both the department and the designated~~
23 ~~agency, as specified in department rules.~~

24 ~~[(b)]~~ Each facility shall require each employee of the
25 facility, as a condition of employment with the facility, to sign a
26 statement that the employee realizes that the employee may be
27 criminally liable for failure to report abuse, ~~[or]~~ neglect, or

1 exploitation.

2 ~~[(c) A person shall make an oral report immediately on~~
3 ~~learning of abuse or neglect and shall make a written report to the~~
4 ~~same agency not later than the fifth day after the oral report is~~
5 ~~made.]~~

6 Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT
7 ~~[INVESTIGATION AND REPORT OF RECEIVING AGENCY]. [(a) The~~
8 ~~department or the designated agency shall make a thorough~~
9 ~~investigation promptly after receiving either the oral or written~~
10 ~~report.~~

11 ~~[(b) The primary purpose of the investigation is the~~
12 ~~protection of the resident.~~

13 ~~[(c) In the investigation, the department or the designated~~
14 ~~agency shall determine:~~

15 ~~[(1) the nature, extent, and cause of the abuse or~~
16 ~~neglect;~~

17 ~~[(2) the identity of the person responsible for the~~
18 ~~abuse or neglect;~~

19 ~~[(3) the names and conditions of the other residents;~~

20 ~~[(4) an evaluation of the persons responsible for the~~
21 ~~care of the residents;~~

22 ~~[(5) the adequacy of the facility environment; and~~

23 ~~[(6) any other information required by the department.~~

24 ~~[(d) The investigation may include a visit to the resident's~~
25 ~~facility and an interview with the resident, if considered~~
26 ~~appropriate by the department.~~

27 ~~[(e) If the department attempts to carry out an on-site~~

1 ~~investigation and it is shown that admission to the facility or any~~
2 ~~place where a resident is located cannot be obtained, a probate or~~
3 ~~county court shall order the person responsible for the care of the~~
4 ~~resident or the person in charge of a place where the resident is~~
5 ~~located to allow admission for the investigation and any interview~~
6 ~~with the resident.~~

7 ~~[(f)]~~ Before the completion of the investigation by the
8 Department of Family and Protective Services, the department shall
9 file a petition for temporary care and protection of a ~~[the]~~
10 resident if the department determines, based on information
11 provided to the department by the Department of Family and
12 Protective Services, that immediate removal is necessary to protect
13 the resident from further abuse, [or] neglect, or exploitation.

14 ~~[(g) The department or the designated agency shall make a~~
15 ~~complete written report of the investigation and submit the report~~
16 ~~and its recommendations to the district attorney and the~~
17 ~~appropriate law enforcement agency and, if necessary, to the~~
18 ~~department on the department's request.]~~

19 Sec. 252.126. CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION
20 REPORT. (a) A report, record, or working paper used or developed
21 in an investigation made under this subchapter is confidential and
22 may be disclosed only as provided by Chapter 48, Human Resources
23 Code, Chapter 261, Family Code, or this section ~~[for purposes~~
24 ~~consistent with the rules adopted by the board or the designated~~
25 ~~agency].~~

26 (b) The Department of Family and Protective Services shall
27 provide a copy of a completed investigation report to the

1 department and may disclose information related to the
2 investigation at any time to the department as necessary to protect
3 a resident of a facility from abuse, neglect, or exploitation.

4 SECTION 11. Section 252.132(h), Health and Safety Code, is
5 amended to read as follows:

6 (h) Each facility shall require each employee of the
7 facility, as a condition of employment with the facility, to sign a
8 statement that the employee understands the employee's rights under
9 this section. The statement must be part of the statement required
10 under Section 252.122 [~~252.122(b)~~]. If a facility does not require
11 an employee to read and sign the statement, the periods prescribed
12 by Subsection (e) do not apply, and the petitioner must bring suit
13 not later than the second anniversary of the date on which the
14 person's employment is suspended or terminated.

15 SECTION 12. Section 253.001(4), Health and Safety Code, is
16 amended to read as follows:

17 (4) "Facility" means:
18 (A) a facility:
19 (i) licensed by the department; or
20 (ii) licensed under Chapter 252;
21 (B) an adult foster care provider that contracts
22 with the department; or
23 (C) a home and community support services agency
24 licensed by the department under Chapter 142.

25 SECTION 13. Section 253.002, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) If the

1 department receives a report that an employee of a facility, other
2 than a facility licensed under Chapter 252, committed reportable
3 conduct, the department shall investigate the report to determine
4 whether the employee has committed the reportable conduct.

5 (b) If the Department of Aging and Disability Services
6 receives a report that an employee of a facility licensed under
7 Chapter 252 committed reportable conduct, the department shall
8 forward that report to the Department of Family and Protective
9 Services for investigation.

10 SECTION 14. Section 531.002(17), Health and Safety Code, is
11 amended to read as follows:

12 (17) "State supported living center [~~school~~]" means a
13 state-supported and structured residential facility operated by
14 the Department of Aging and Disability Services [~~department~~] to
15 provide to clients with mental retardation a variety of services,
16 including medical treatment, specialized therapy, and training in
17 the acquisition of personal, social, and vocational skills.

18 SECTION 15. Chapter 531, Health and Safety Code, is amended
19 by adding Section 531.0021 to read as follows:

20 Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT.

21 (a) A reference in law to a "state school" means a state supported
22 living center.

23 (b) A reference in law to a "superintendent," to the extent
24 the term is intended to refer to the person in charge of a state
25 supported living center, means the director of a state supported
26 living center.

27 SECTION 16. Section 532.001(b), Health and Safety Code, is

1 amended to read as follows:

2 (b) The Department of Aging and Disability Services and the
3 Department of State Health Services [~~department~~] also include
4 [~~includes~~] community services operated by those departments [~~the~~
5 ~~department~~] and the following facilities, as appropriate:

- 6 (1) the central office of each [~~the~~] department;
- 7 (2) the Austin State Hospital;
- 8 (3) the Big Spring State Hospital;
- 9 (4) the Kerrville State Hospital;
- 10 (5) the Rusk State Hospital;
- 11 (6) the San Antonio State Hospital;
- 12 (7) the Terrell State Hospital;
- 13 (8) the North Texas State Hospital;
- 14 (9) the Abilene State Supported Living Center
15 [~~School~~];
- 16 (10) the Austin State Supported Living Center
17 [~~School~~];
- 18 (11) the Brenham State Supported Living Center
19 [~~School~~];
- 20 (12) the Corpus Christi State Supported Living Center
21 [~~School~~];
- 22 (13) the Denton State Supported Living Center
23 [~~School~~];
- 24 (14) the Lubbock State Supported Living Center
25 [~~School~~];
- 26 (15) the Lufkin State Supported Living Center
27 [~~School~~];

- 1 (16) the Mexia State Supported Living Center [~~School~~];
2 (17) the Richmond State Supported Living Center
3 [~~School~~];
4 (18) the San Angelo State Supported Living Center
5 [~~School~~];
6 (19) the San Antonio State Supported Living Center
7 [~~School~~];
8 (20) the El Paso State Supported Living Center; and
9 (21) the Rio Grande State Center; and
10 (22) the Waco Center for Youth.

11 SECTION 17. Section 551.022, Health and Safety Code, is
12 amended by adding Subsection (e) to read as follows:

13 (e) This section does not apply to a state supported living
14 center or the director of a state supported living center.

15 SECTION 18. Subchapter B, Chapter 551, Health and Safety
16 Code, is amended by adding Section 551.0225 to read as follows:

17 Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING
18 CENTER DIRECTOR. (a) The director of a state supported living
19 center is the administrative head of the center.

20 (b) The director of a state supported living center has the
21 custody of and responsibility to care for the buildings, grounds,
22 furniture, and other property relating to the center.

23 (c) The director of a state supported living center shall:

24 (1) oversee the admission and discharge of residents
25 and clients;

26 (2) keep a register of all residents and clients
27 admitted to or discharged from the center;

1 (3) ensure that the civil rights of residents and
2 clients of the center are protected;

3 (4) ensure the health, safety, and general welfare of
4 residents and clients of the center;

5 (5) supervise repairs and improvements to the center;

6 (6) ensure that center money is spent judiciously and
7 economically;

8 (7) keep an accurate and detailed account of all money
9 received and spent, stating the source of the money and on whom and
10 the purpose for which the money is spent;

11 (8) keep a full record of the center's operations;

12 (9) monitor the arrival and departure of individuals
13 to and from the center as appropriate to ensure the safety of
14 residents; and

15 (10) ensure that residents' family members and legally
16 authorized representatives are notified of serious events that may
17 indicate problems in the care or treatment of residents.

18 (d) In accordance with department rules and operating
19 procedures, the director of a state supported living center may:

20 (1) establish policy to govern the center that the
21 director considers will best promote the residents' interest and
22 welfare;

23 (2) hire subordinate officers, teachers, and other
24 employees and set their salaries, in the absence of other law; and

25 (3) dismiss a subordinate officer, teacher, or
26 employee.

27 SECTION 19. Subtitle B, Title 7, Health and Safety Code, is

1 amended by adding Chapter 555 to read as follows:

2 CHAPTER 555. STATE SUPPORTED LIVING CENTERS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 555.001. DEFINITIONS. In this chapter:

5 (1) "Alleged offender resident" means a person with
6 mental retardation who:

7 (A) was committed to or transferred to a state
8 supported living center under Chapter 46B or 46C, Code of Criminal
9 Procedure, as a result of being charged with or convicted of a
10 criminal offense; or

11 (B) is a child committed to or transferred to a
12 state supported living center under Chapter 55, Family Code, as a
13 result of being alleged by petition or having been found to have
14 engaged in delinquent conduct constituting a criminal offense.

15 (2) "Center" means the state supported living centers
16 and the ICF-MR component of the Rio Grande State Center.

17 (3) "Center employee" means an employee of a state
18 supported living center or the ICF-MR component of the Rio Grande
19 State Center.

20 (4) "Client" means a person with mental retardation
21 who receives ICF-MR services from a state supported living center
22 or the ICF-MR component of the Rio Grande State Center.

23 (5) "Commission" means the Health and Human Services
24 Commission.

25 (6) "Complaint" means information received by the
26 office of independent ombudsman regarding a possible violation of a
27 right of a resident or client and includes information received

1 regarding a failure by a state supported living center or the ICF-MR
2 component of the Rio Grande State Center to comply with the
3 department's policies and procedures relating to the community
4 living options information process.

5 (7) "Department" means the Department of Aging and
6 Disability Services.

7 (8) "Direct care employee" means a center employee who
8 provides direct delivery of services to a resident or client.

9 (9) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 (10) "High-risk alleged offender resident" means an
12 alleged offender resident who has been determined under Section
13 555.003 to be at risk of inflicting substantial physical harm to
14 another.

15 (11) "Independent ombudsman" means the individual who
16 has been appointed to the office of independent ombudsman for state
17 supported living centers.

18 (12) "Inspector general" means the Health and Human
19 Services Commission's office of inspector general.

20 (13) "Interdisciplinary team" has the meaning
21 assigned by Section 591.003.

22 (14) "Office" means the office of independent
23 ombudsman for state supported living centers established under
24 Subchapter C.

25 (15) "Resident" means a person with mental retardation
26 who resides in a state supported living center or the ICF-MR
27 component of the Rio Grande State Center.

1 (16) "State supported living center" has the meaning
2 assigned by Section 531.002.

3 Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTER. (a)
4 The department shall establish a separate forensic state supported
5 living center for the care apart from other clients and residents of
6 high-risk alleged offender residents. The department shall
7 designate the Mexia State Supported Living Center for this purpose.

8 (b) In establishing the forensic state supported living
9 center, the department shall:

10 (1) transfer an alleged offender resident already
11 residing in a center who is classified as a high-risk alleged
12 offender resident in accordance with Section 555.003, to the
13 forensic state supported living center;

14 (2) place high-risk alleged offender residents in
15 separate homes at the forensic state supported living center based
16 on whether an individual is:

17 (A) an adult or a person younger than 18 years of
18 age; or

19 (B) male or female;

20 (3) place all alleged offender residents, at the time
21 the residents are initially committed to or transferred to a
22 center, in the forensic state supported living center until a
23 determination under Section 555.003 has been completed;

24 (4) transfer all residents who request a transfer,
25 other than high-risk alleged offender residents and alleged
26 offender residents for whom a determination has not been completed
27 under Section 555.003, from the forensic state supported living

1 center; and

2 (5) provide training regarding the service delivery
3 system for high-risk alleged offender residents to direct care
4 employees of the forensic state supported living center.

5 (c) An alleged offender resident committed to the forensic
6 state supported living center, for whom a determination under
7 Section 555.003 has been completed and who is not classified as a
8 high-risk alleged offender resident, may request a transfer to
9 another center in accordance with Subchapter B, Chapter 594.

10 (d) The department shall ensure that the forensic state
11 supported living center:

12 (1) complies with the requirements for ICF-MR
13 certification under the Medicaid program, as appropriate; and

14 (2) has additional center employees, including direct
15 care employees, to protect the safety of center employees,
16 residents, and the community.

17 (e) The department shall collect data regarding the
18 commitment of alleged offender residents to the forensic state
19 supported living center, including any offense with which an
20 alleged offender resident is charged, the location of the
21 committing court, whether the alleged offender resident has
22 previously been in the custody of the Texas Youth Commission or the
23 Department of Family and Protective Services, and whether the
24 alleged offender resident receives mental health services or
25 previously received any services under a Section 1915(c) waiver
26 program. The department shall annually submit to the governor, the
27 lieutenant governor, the speaker of the house of representatives,

1 and the standing committees of the legislature with primary subject
2 matter jurisdiction over state supported living centers a report of
3 the information collected under this section. The report may not
4 contain personally identifiable information for any person in the
5 report.

6 Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER
7 STATUS. (a) Not later than the 30th day after the date an alleged
8 offender resident is first committed to the forensic state
9 supported living center and, if the resident is classified as a
10 high-risk alleged offender resident, annually on the anniversary of
11 that date, an interdisciplinary team shall determine whether the
12 alleged offender resident is at risk of inflicting substantial
13 physical harm to another and should be classified or remain
14 classified as a high-risk alleged offender resident.

15 (b) In making a determination under Subsection (a), the
16 interdisciplinary team shall document and collect evidence
17 regarding the reason the alleged offender resident is determined to
18 be at risk of inflicting substantial physical harm to another.

19 (c) The interdisciplinary team shall provide the team's
20 findings regarding whether the alleged offender resident is at risk
21 of inflicting substantial physical harm to another and the
22 documentation and evidence collected under this section to:

- 23 (1) the department;
24 (2) the director of the forensic state supported
25 living center;
26 (3) the independent ombudsman;
27 (4) the alleged offender resident or the alleged

1 offender resident's parent if the resident is a minor; and

2 (5) the alleged offender resident's legally authorized
3 representative.

4 (d) An alleged offender resident who is determined to be at
5 risk of inflicting substantial physical harm to another and is
6 classified as a high-risk alleged offender resident is entitled to
7 an administrative hearing with the department to contest that
8 determination and classification.

9 (e) An individual who has exhausted the administrative
10 remedies provided by Subsection (d) may bring a suit to appeal the
11 determination and classification in district court in Travis
12 County. The suit must be filed not later than the 30th day after the
13 date the final order in the administrative hearing is provided to
14 the individual. An appeal under this section is by trial de novo.

15 [Sections 555.004-555.020 reserved for expansion]

16 SUBCHAPTER B. POWERS AND DUTIES

17 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
18 EMPLOYEES AND VOLUNTEERS OF CENTERS. (a) The department and the
19 Department of State Health Services shall perform a state and
20 federal criminal history background check on a person:

21 (1) who is:

22 (A) an applicant for employment with the agency;

23 (B) an employee of the agency;

24 (C) a volunteer with the agency; or

25 (D) an applicant for a volunteer position with
26 the agency; and

27 (2) who would be placed in direct contact with a

1 resident or client.

2 (b) The department and the Department of State Health
3 Services shall require a person described by Subsection (a) to
4 submit fingerprints in a form and of a quality acceptable to the
5 Department of Public Safety and the Federal Bureau of Investigation
6 for use in conducting a criminal history background check.

7 (c) Each agency shall obtain electronic updates from the
8 Department of Public Safety of arrests and convictions of a person:

9 (1) for whom the agency performs a background check
10 under Subsection (a); and

11 (2) who remains an employee or volunteer of the agency
12 and continues to have direct contact with a resident or client.

13 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
14 commissioner shall adopt a policy regarding random testing and
15 reasonable suspicion testing for the illegal use of drugs by a
16 center employee.

17 (b) The policy adopted under Subsection (a) must provide
18 that a center employee may be terminated solely on the basis of a
19 single positive test for illegal use of a controlled substance. The
20 policy must establish an appeals process for a center employee who
21 tests positively for illegal use of a controlled substance.

22 (c) The director of a state supported living center or the
23 superintendent of the Rio Grande State Center shall enforce the
24 policy adopted under Subsection (a) by performing necessary drug
25 testing of the center employees for the use of a controlled
26 substance as defined by Section 481.002.

27 (d) Testing under this section may be performed on a random

1 basis or on reasonable suspicion of the use of a controlled
2 substance.

3 (e) For purposes of this section, a report made under
4 Section 555.023 is considered reasonable suspicion of the use of a
5 controlled substance.

6 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
7 executive commissioner shall adopt a policy requiring a center
8 employee who knows or reasonably suspects that another center
9 employee is illegally using or under the influence of a controlled
10 substance, as defined by Section 481.002, to report that knowledge
11 or reasonable suspicion to the director of the state supported
12 living center or the superintendent of the Rio Grande State Center,
13 as appropriate.

14 Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a
15 center employee begins to perform the employee's duties without
16 direct supervision, the department shall provide the employee with
17 competency training and a course of instruction about the general
18 duties of a center employee. The department shall ensure the basic
19 center employee competency course focuses on:

20 (1) the uniqueness of the individuals the center
21 employee serves;

22 (2) techniques for improving quality of life for and
23 promoting the health and safety of individuals with mental
24 retardation; and

25 (3) the conduct expected of center employees.

26 (b) The department shall ensure the training required by
27 Subsection (a) provides instruction and information regarding the

1 following topics:

2 (1) the general operation and layout of the center at
3 which the person is employed, including armed intruder lockdown
4 procedures;

5 (2) an introduction to mental retardation;

6 (3) an introduction to autism;

7 (4) an introduction to mental illness and dual
8 diagnosis;

9 (5) the rights of individuals with mental retardation
10 who receive services from the department;

11 (6) respecting personal choices made by residents and
12 clients;

13 (7) the safe and proper use of restraints;

14 (8) recognizing and reporting:

15 (A) evidence of abuse, neglect, and exploitation
16 of individuals with mental retardation;

17 (B) unusual incidents;

18 (C) reasonable suspicion of illegal drug use in
19 the workplace;

20 (D) workplace violence; or

21 (E) sexual harassment in the workplace;

22 (9) preventing and treating infection;

23 (10) first aid;

24 (11) cardiopulmonary resuscitation;

25 (12) the Health Insurance Portability and
26 Accountability Act of 1996 (Pub. L. No. 104-191); and

27 (13) the rights of center employees.

1 (c) In addition to the training required by Subsection (a)
2 and before a direct care employee begins to perform the direct care
3 employee's duties without direct supervision, the department shall
4 provide a direct care employee with training and instructional
5 information regarding implementation of the interdisciplinary
6 treatment program for each resident or client for whom the direct
7 care employee will provide direct care, including the following
8 topics:

9 (1) prevention and management of aggressive or violent
10 behavior;

11 (2) observing and reporting changes in behavior,
12 appearance, or health of residents and clients;

13 (3) positive behavior support;

14 (4) emergency response;

15 (5) person-directed plans;

16 (6) self-determination;

17 (7) seizure safety;

18 (8) techniques for:

19 (A) lifting;

20 (B) positioning; and

21 (C) movement and mobility;

22 (9) working with aging residents and clients;

23 (10) assisting residents and clients:

24 (A) who have a visual impairment;

25 (B) who have a hearing deficit; or

26 (C) who require the use of adaptive devices and
27 specialized equipment;

1 (11) communicating with residents and clients who use
2 augmentative and alternative devices for communication;

3 (12) assisting residents and clients with personal
4 hygiene;

5 (13) recognizing appropriate food textures;

6 (14) using proper feeding techniques to assist
7 residents and clients with meals;

8 (15) physical and nutritional management plans; and

9 (16) home and community-based services, including the
10 principles of community inclusion and participation and the
11 community living options information process.

12 (d) The executive commissioner shall adopt rules that
13 require a center to provide refresher training courses to direct
14 care employees on a regular basis.

15 (e) A center may allow an employee of an intermediate care
16 facility for persons with mental retardation licensed by the
17 department, an employee of a person licensed or certified to
18 provide Section 1915(c) waiver program services, or another
19 employee or professional involved in the provision of services to
20 persons with mental retardation to receive information and training
21 under this section, as appropriate. The center may charge an
22 administrative fee in an amount not to exceed the cost of providing
23 the information or training.

24 Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,
25 "private space" means a place in a center in which a resident or
26 client has a reasonable expectation of privacy, including:

27 (1) a bedroom;

1 the office to perform its duties.

2 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
3 the performance of the ombudsman's duties and powers under this
4 subchapter acts independently of the department.

5 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The
6 governor shall appoint the independent ombudsman.

7 (b) The governor may appoint as independent ombudsman only
8 an individual with at least five years of experience managing and
9 ensuring the quality of care and services provided to individuals
10 with mental retardation.

11 Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent
12 ombudsman shall:

13 (1) hire assistant ombudsmen to perform, under the
14 direction of the independent ombudsman, the same duties and
15 exercise the same powers as the independent ombudsman; and

16 (2) station an assistant ombudsman at each center.

17 (b) The independent ombudsman may hire as assistant
18 ombudsmen only individuals with at least five years of experience
19 ensuring the quality of care and services provided to individuals
20 with mental retardation.

21 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
22 as independent ombudsman or as an assistant ombudsman if the person
23 or the person's spouse:

24 (1) is employed by or participates in the management
25 of a business entity or other organization receiving funds from the
26 department;

27 (2) owns or controls, directly or indirectly, any

1 interest in a business entity or other organization receiving funds
2 from the department; or

3 (3) is required to register as a lobbyist under
4 Chapter 305, Government Code, because of the person's activities or
5 compensation on behalf of a profession related to the operation of
6 the department.

7 Sec. 555.056. REPORT. (a) The independent ombudsman shall
8 submit on a biannual basis to the governor, the lieutenant
9 governor, the speaker of the house of representatives, and the
10 chairs of the standing committees of the senate and the house of
11 representatives with primary jurisdiction over state supported
12 living centers a report that is both aggregated and disaggregated
13 by individual center and describes:

14 (1) the work of the independent ombudsman;

15 (2) the results of any review or investigation
16 undertaken by the independent ombudsman, including a review or
17 investigation of services contracted by the department;

18 (3) any recommendations that the independent
19 ombudsman has in relation to the duties of the independent
20 ombudsman; and

21 (4) any recommendations that the independent
22 ombudsman has for systemic improvements needed to decrease
23 incidents of abuse, neglect, or exploitation at an individual
24 center or at all centers.

25 (b) The independent ombudsman shall ensure that information
26 submitted in a report under Subsection (a) does not permit the
27 identification of an individual.

1 (c) The independent ombudsman shall immediately report to
2 the governor, the lieutenant governor, and the speaker of the house
3 of representatives any particularly serious or flagrant:

4 (1) case of abuse or injury of a resident or client
5 about which the independent ombudsman is made aware;

6 (2) problem concerning the administration of a center
7 program or operation; or

8 (3) interference by a center, the department, or the
9 commission, other than actions by the commission's office of
10 inspector general in accordance with the office's duties, with an
11 investigation conducted by the independent ombudsman.

12 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
13 department shall allow any resident or client, authorized
14 representative of a resident or client, family member of a resident
15 or client, or other interested party to communicate with the
16 independent ombudsman or an assistant ombudsman. The
17 communication:

18 (1) may be in person, by mail, or by any other means;
19 and

20 (2) is confidential and privileged.

21 (b) The records of the independent ombudsman are
22 confidential, except that the independent ombudsman shall:

23 (1) share with the Department of Family and Protective
24 Services a communication that may involve the abuse, neglect, or
25 exploitation of a resident or client;

26 (2) share with the inspector general a communication
27 that may involve an unusual incident;

1 (3) share with the regulatory services division of the
2 department a communication that may involve a violation of an
3 ICF-MR standard or condition of participation; and

4 (4) disclose the ombudsman's nonprivileged records if
5 required by a court order on a showing of good cause.

6 (c) The independent ombudsman may make reports relating to
7 an investigation by the independent ombudsman public after the
8 investigation is complete but only if the name and any other
9 personally identifiable information of a resident or client,
10 legally authorized representative of a resident or client, family
11 member of a resident or client, center, center employee, or other
12 individual are redacted from the report and remain confidential.
13 The independent ombudsman may provide an unredacted report to the
14 center involved in the investigation, the department, the
15 Department of Family and Protective Services, and the inspector
16 general.

17 (d) The name, address, or other personally identifiable
18 information of a person who files a complaint with the office of
19 independent ombudsman, information generated by the office of
20 independent ombudsman in the course of an investigation, and
21 confidential records obtained by the office of independent
22 ombudsman are confidential and not subject to disclosure under
23 Chapter 552, Government Code, except as provided by this section.

24 Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The
25 independent ombudsman shall promote awareness among the public,
26 residents, clients, and center employees of:

27 (1) how the office may be contacted;

1 (2) the purpose of the office; and

2 (3) the services the office provides.

3 Sec. 555.059. DUTIES AND POWERS. (a) The independent
4 ombudsman shall:

5 (1) evaluate the process by which a center
6 investigates, reviews, and reports an injury to a resident or
7 client or an unusual incident;

8 (2) evaluate the delivery of services to residents and
9 clients to ensure that the rights of residents and clients are fully
10 observed, including ensuring that each center conducts sufficient
11 unannounced patrols;

12 (3) immediately refer a complaint alleging the abuse,
13 neglect, or exploitation of a resident or client to the Department
14 of Family and Protective Services;

15 (4) refer a complaint alleging employee misconduct
16 that does not involve abuse, neglect, or exploitation or a possible
17 violation of an ICF-MR standard or condition of participation to
18 the regulatory services division of the department;

19 (5) refer a complaint alleging an unusual incident to
20 the inspector general;

21 (6) conduct investigations of complaints, other than
22 complaints alleging criminal offenses or the abuse, neglect, or
23 exploitation of a resident or client, if the office determines
24 that:

25 (A) a resident or client or the resident's or
26 client's family may be in need of assistance from the office; or

27 (B) a complaint raises the possibility of a

1 systemic issue in the center's provision of services;
2 (7) conduct an annual audit of each center's policies,
3 practices, and procedures to ensure that each resident and client
4 is encouraged to exercise the resident's or client's rights,
5 including:
6 (A) the right to file a complaint; and
7 (B) the right to due process;
8 (8) prepare and deliver an annual report regarding the
9 findings of each audit to the:
10 (A) executive commissioner;
11 (B) commissioner;
12 (C) Aging and Disability Services Council;
13 (D) governor;
14 (E) lieutenant governor;
15 (F) speaker of the house of representatives;
16 (G) standing committees of the senate and house
17 of representatives with primary jurisdiction over state supported
18 living centers; and
19 (H) state auditor;
20 (9) require a center to provide access to all records,
21 data, and other information under the control of the center that the
22 independent ombudsman determines is necessary to investigate a
23 complaint or to conduct an audit under this section;
24 (10) review all final reports produced by the
25 Department of Family and Protective Services, the regulatory
26 services division of the department, and the inspector general
27 regarding a complaint referred by the independent ombudsman;

1 (11) provide assistance to a resident, client,
2 authorized representative of a resident or client, or family member
3 of a resident or client who the independent ombudsman determines is
4 in need of assistance, including advocating with an agency,
5 provider, or other person in the best interests of the resident or
6 client;

7 (12) make appropriate referrals under any of the
8 duties and powers listed in this subsection; and

9 (13) monitor and evaluate the department's actions
10 relating to any problem identified or recommendation included in a
11 report received from the inspector general or from the Department
12 of Family and Protective Services relating to an investigation of
13 alleged abuse, neglect, or exploitation of a resident or client.

14 (b) The independent ombudsman may apprise a person who is
15 interested in a resident's or client's welfare of the rights of the
16 resident or client.

17 (c) To assess whether a resident's or client's rights have
18 been violated, the independent ombudsman may, in any matter that
19 does not involve an alleged criminal offense or the abuse, neglect,
20 or exploitation of a resident or client, contact or consult with an
21 administrator, employee, resident, client, family member of a
22 resident or client, expert, or other individual in the course of the
23 investigation or to secure information.

24 (d) Notwithstanding any other provision of this chapter,
25 the independent ombudsman may not investigate an alleged criminal
26 offense or the alleged abuse, neglect, or exploitation of a
27 resident or client.

1 Sec. 555.060. RETALIATION PROHIBITED. The department or a
2 center may not retaliate against a department employee, center
3 employee, or any other person who in good faith makes a complaint to
4 the office of independent ombudsman or cooperates with the office
5 in an investigation.

6 Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall
7 establish a permanent, toll-free number for the purpose of
8 receiving any information concerning the violation of a right of a
9 resident or client.

10 (b) The office shall ensure that:

11 (1) the toll-free number is prominently displayed in
12 the main administration area and other appropriate common areas of
13 a center; and

14 (2) a resident, a client, the legally authorized
15 representative of a resident or client, and a center employee have
16 confidential access to a telephone for the purpose of calling the
17 toll-free number.

18 [Sections 555.062-555.100 reserved for expansion]

19 SUBCHAPTER D. INSPECTOR GENERAL INVESTIGATIONS

20 Sec. 555.101. CONDUCTING AND ASSISTING LAW ENFORCEMENT
21 AGENCIES WITH CERTAIN INVESTIGATIONS. (a) The inspector general
22 shall employ and commission peace officers for the purpose of
23 conducting criminal investigations relating to a center and
24 assisting a state or local law enforcement agency in the
25 investigation of an alleged criminal offense relating to a center.
26 A peace officer employed and commissioned by the inspector general
27 is a peace officer for purposes of Article 2.12, Code of Criminal

1 Procedure.

2 (b) The inspector general shall immediately initiate a
3 prompt and thorough evaluation to determine whether the inspector
4 general has cause to investigate a possible criminal offense
5 related to a report submitted to the inspector general by:

6 (1) the Department of Family and Protective Services
7 in accordance with Chapter 48, Human Resources Code, or Chapter
8 261, Family Code, regarding an allegation of abuse, neglect, or
9 exploitation of a resident or client; or

10 (2) the independent ombudsman in accordance with
11 Subchapter C, regarding an unusual incident relating to a center.

12 (c) If the inspector general determines, not later than 24
13 hours after receiving a report under Subsection (b), that there is
14 not a reason to investigate a possible criminal offense related to
15 the report, the inspector general shall provide notice of that
16 determination and a copy of any report to:

17 (1) the Department of Family and Protective Services
18 and the department if the report relates to the alleged abuse,
19 neglect, or exploitation of a resident or client after which notice
20 the Department of Family and Protective Services shall proceed with
21 and complete the investigation of the report; or

22 (2) the independent ombudsman and the department if
23 the report does not relate to the alleged abuse, neglect, or
24 exploitation of a resident or client.

25 (d) If the inspector general determines that there is cause
26 to investigate a possible criminal offense related to the report
27 submitted under Subsection (b) or if, not later than 24 hours after

1 receiving the report, the inspector general cannot determine
2 whether there is cause to investigate a possible criminal offense
3 related to the report, the inspector general shall conduct or
4 assist a law enforcement agency in conducting an investigation of
5 the report in the manner provided by this section and other law and
6 regulations applicable to investigations of abuse, neglect, or
7 exploitation that would apply to a similar investigation performed
8 by the Department of Family and Protective Services.

9 (e) In making a determination or conducting an
10 investigation regarding a report under this section, the inspector
11 general shall:

12 (1) within one hour of determining the identity of an
13 alleged perpetrator of abuse, neglect, or exploitation or another
14 criminal offense, notify the center and the department;

15 (2) within one hour of determining that there is cause
16 to believe that a criminal offense relating to a center occurred:

17 (A) notify the appropriate local law enforcement
18 agency; and

19 (B) provide the local law enforcement agency with
20 information or assistance as needed;

21 (3) complete and provide an investigative report that
22 is redacted as necessary as provided by the memorandum of
23 understanding adopted under Section 48.007, Human Resources Code,
24 to:

25 (A) the appropriate center not later than the
26 fifth working day after the date the inspector general receives a
27 report of alleged abuse, neglect, or exploitation for which the

1 inspector general conducts an investigation; and

2 (B) the appropriate center, the Department of
3 Family and Protective Services, the department, and the assistant
4 independent ombudsman for the appropriate center not later than the
5 14th day after the date the inspector general receives a report of
6 alleged abuse, neglect, or exploitation for which the inspector
7 general conducts an investigation;

8 (4) if the inspector general believes that a criminal
9 prosecution is appropriate, refer the findings of an investigation
10 conducted and the evidence obtained by the inspector general:

11 (A) to the appropriate local prosecuting
12 attorney; or

13 (B) if the appropriate local prosecuting
14 attorney does not proceed with a prosecution before the 30th day
15 after the date the inspector general refers findings and evidence
16 to the local prosecuting attorney under this section, to the
17 attorney general; and

18 (5) refer the inspector general's findings and the
19 evidence obtained to the department if the evidence indicates that
20 employee misconduct occurred.

21 (f) The attorney general, if requested to do so by a local
22 prosecuting attorney, may assist the local prosecuting attorney in
23 the prosecution of an offense involving a center.

24 (g) The inspector general shall ensure that an
25 investigation report completed by the inspector general conforms to
26 the requirements of the Department of Family and Protective
27 Services single tracking system for reports and investigations

1 established under Section 48.256, Human Resources Code.

2 (h) The inspector general shall analyze each report
3 received under Subsection (b), regardless of whether the inspector
4 general investigates the report, in order to detect patterns
5 indicating abuse, neglect, or exploitation at a center. The
6 inspector general may investigate patterns identified under this
7 subsection that indicate possible criminal offenses and may
8 recommend additional action or investigation related to those
9 patterns, as appropriate, to the department, the Department of
10 Family and Protective Services, the appropriate center, and the
11 independent ombudsman.

12 Sec. 555.102. SUMMARY REPORT. (a) The inspector general
13 shall prepare a summary report for each investigation conducted
14 under this subchapter. The inspector general shall ensure that the
15 report does not contain personally identifiable information of an
16 individual mentioned in the report.

17 (b) The summary report must include:

18 (1) a summary of the activities performed by the
19 inspector general in conducting the investigation;

20 (2) a statement regarding whether the investigation
21 resulted in a finding that an alleged criminal offense was
22 committed; and

23 (3) a description of the alleged criminal offense that
24 was committed.

25 (c) The inspector general shall deliver the summary report
26 to the:

27 (1) executive commissioner;

- 1 (2) commissioner of the department;
2 (3) commissioner of the Department of Family and
3 Protective Services;
4 (4) Aging and Disability Services Council;
5 (5) governor;
6 (6) lieutenant governor;
7 (7) speaker of the house of representatives;
8 (8) standing committees of the senate and house of
9 representatives with primary jurisdiction over centers;
10 (9) state auditor;
11 (10) the independent ombudsman and the assistant
12 ombudsman for the center involved in the report; and
13 (11) the alleged victim or the alleged victim's
14 legally authorized representative.

15 (d) A summary report regarding an investigation is subject
16 to required disclosure under Chapter 552, Government Code. All
17 information and materials compiled by the inspector general in
18 connection with an investigation are confidential, and not subject
19 to disclosure under Chapter 552, Government Code, and not subject
20 to disclosure, discovery, subpoena, or other means of legal
21 compulsion for their release to anyone other than the inspector
22 general or the inspector general's employees or agents involved in
23 the investigation conducted by the inspector general, except that
24 this information may be disclosed to the Department of Family and
25 Protective Services, the office of the attorney general, the state
26 auditor's office, and law enforcement agencies.

27 Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector

1 general shall prepare an annual status report of the inspector
2 general's activities under this subchapter. The annual report may
3 not contain personally identifiable information of an individual
4 mentioned in the report.

5 (b) The annual status report must include information that
6 is aggregated and disaggregated by individual center regarding:

7 (1) the number and type of investigations conducted by
8 the inspector general;

9 (2) the number and type of investigations involving a
10 center employee;

11 (3) the relationship of an alleged victim to an
12 alleged perpetrator, if any;

13 (4) the number of investigations conducted that
14 involve the suicide, death, or hospitalization of an alleged
15 victim; and

16 (5) the number of completed investigations in which
17 commission of an alleged offense was confirmed or unsubstantiated
18 or in which the investigation was inconclusive, and a description
19 of the reason that allegations were unsubstantiated or the
20 investigation was inconclusive.

21 (c) The inspector general shall submit the annual status
22 report to the:

23 (1) executive commissioner;

24 (2) commissioner of the department;

25 (3) commissioner of the Department of Family and
26 Protective Services;

27 (4) Aging and Disability Services Council;

1 (5) Family and Protective Services Council;

2 (6) governor;

3 (7) lieutenant governor;

4 (8) speaker of the house of representatives;

5 (9) standing committees of the senate and house of
6 representatives with primary jurisdiction over centers;

7 (10) state auditor; and

8 (11) comptroller.

9 (d) An annual status report submitted under this section is
10 public information under Chapter 552, Government Code.

11 Sec. 555.104. RETALIATION PROHIBITED. The department or a
12 center may not retaliate against a department employee, a center
13 employee, or any other person who in good faith cooperates with the
14 inspector general under this subchapter.

15 SECTION 20. Section 40.001, Human Resources Code, is
16 amended by adding Subdivision (6) to read as follows:

17 (6) "State supported living center" has the meaning
18 assigned by Section 531.002, Health and Safety Code.

19 SECTION 21. Section 40.0315(b), Human Resources Code, is
20 amended to read as follows:

21 (b) An investigator in the unit shall determine whether an
22 elderly or disabled person who is the subject of a report made under
23 Section 48.051(a) may have suffered from abuse, neglect, or
24 exploitation as a result of the criminal conduct of another
25 person. If the investigator determines that criminal conduct may
26 have occurred, the investigator shall immediately notify:

27 (1) the commission's office of inspector general if

1 the disabled person who is the subject of the report resides in a
2 state supported living center or the ICF-MR component of the Rio
3 Grande State Center; or

4 (2) the appropriate law enforcement agency.

5 SECTION 22. Subchapter A, Chapter 48, Human Resources Code,
6 is amended by adding Section 48.007 to read as follows:

7 Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
8 ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The Health and
9 Human Services Commission, the department, the Department of Aging
10 and Disability Services, the office of independent ombudsman for
11 state supported living centers, and the Health and Human Services
12 Commission's office of inspector general shall enter into a
13 memorandum of understanding regarding investigations of alleged
14 abuse, neglect, or exploitation of residents or clients of state
15 supported living centers or the ICF-MR component of the Rio Grande
16 State Center that delineates the responsibilities of each agency
17 under this chapter, Chapter 261, Family Code, and Chapter 555,
18 Health and Safety Code, and amend the memorandum of understanding
19 as necessary to reflect changes in those responsibilities. The
20 Health and Human Services Commission is the final arbiter of any
21 dispute regarding the memorandum of understanding under this
22 section.

23 SECTION 23. Sections 48.051(a) and (b), Human Resources
24 Code, are amended to read as follows:

25 (a) Except as prescribed by Subsection (b), a person having
26 cause to believe that an elderly or disabled person is in the state
27 of abuse, neglect, or exploitation, including a disabled person

1 receiving services as described by Section 48.252, shall report the
2 information required by Subsection (d) immediately to the
3 department.

4 (b) If a person has cause to believe that an elderly or
5 disabled person, other than a disabled person receiving services as
6 described by Section 48.252, has been abused, neglected, or
7 exploited in a facility operated, licensed, certified, or
8 registered by a state agency [~~other than the Texas Department of~~
9 ~~Mental Health and Mental Retardation~~], the person shall report the
10 information to the state agency that operates, licenses, certifies,
11 or registers the facility for investigation by that agency.

12 SECTION 24. Section 48.052(a), Human Resources Code, is
13 amended to read as follows:

14 (a) A person commits an offense if the person has cause to
15 believe that an elderly or disabled person has been abused,
16 neglected, or exploited or is in the state of abuse, neglect, or
17 exploitation and knowingly fails to report in accordance with this
18 chapter. An offense under this subsection is a Class A misdemeanor,
19 except that the offense is a state jail felony if it is shown on the
20 trial of the offense that the disabled person was a person with
21 mental retardation who resided in a state supported living center,
22 the ICF-MR component of the Rio Grande State Center, or a facility
23 licensed under Chapter 252, Health and Safety Code, and the actor
24 knew that the disabled person had suffered serious bodily injury as
25 a result of the abuse, neglect, or exploitation.

26 SECTION 25. Section 48.1522, Human Resources Code, is
27 amended to read as follows:

1 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW
2 ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if
3 ~~[If]~~ during the course of the department's or another state agency's
4 investigation of reported abuse, neglect, or exploitation a
5 caseworker of the department or other state agency, as applicable,
6 or the caseworker's supervisor has cause to believe that the
7 elderly or disabled person has been abused, neglected, or exploited
8 by another person in a manner that constitutes a criminal offense
9 under any law, including Section 22.04, Penal Code, the caseworker
10 or supervisor shall:

11 (1) immediately notify an appropriate law enforcement
12 agency; and

13 (2) provide the law enforcement agency with a copy of
14 the investigation report of the department or other state agency,
15 as applicable, in a timely manner.

16 (b) If during the course of the department's investigation
17 of reported abuse, neglect, or exploitation a caseworker of the
18 department or the caseworker's supervisor has cause to believe that
19 a disabled person who is a resident or client of a state supported
20 living center or the ICF-MR component of the Rio Grande State Center
21 has been abused, neglected, or exploited by another person in a
22 manner that constitutes a criminal offense under any law, including
23 Section 22.04, Penal Code, the caseworker or supervisor shall:

24 (1) immediately notify the commission's office of
25 inspector general;

26 (2) in a timely manner provide the commission's office
27 of inspector general with the evidence collected by the department

1 during the investigation; and

2 (3) place the department's investigation on hold and
3 proceed with the investigation only in accordance with Section
4 48.252(d).

5 SECTION 26. The heading to Subchapter F, Chapter 48, Human
6 Resources Code, is amended to read as follows:

7 SUBCHAPTER F. INVESTIGATIONS IN CERTAIN [~~TD~~~~MHMR~~] FACILITIES,
8 COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND MENTAL RETARDATION
9 [~~MHMR~~] AUTHORITIES

10 SECTION 27. Section 48.252, Human Resources Code, is
11 amended to read as follows:

12 Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN [~~MHMR~~]
13 FACILITIES AND IN COMMUNITY CENTERS. (a) The department shall
14 receive and investigate reports of the abuse, neglect, or
15 exploitation of an individual with a disability receiving services:

16 (1) in:

17 (A) a mental health facility operated by the
18 [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental~~
19 ~~Retardation~~]; or

20 (B) a facility licensed under Chapter 252, Health
21 and Safety Code;

22 (2) in or from a community center, a local mental
23 health authority, or a local mental retardation authority; or

24 (3) through a program providing services to that
25 person by contract with a mental health facility operated by the
26 [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental~~
27 ~~Retardation~~], a community center, a local mental health authority,

1 or a local mental retardation authority.

2 (b) The department shall receive and, to the extent provided
3 by this section, shall investigate reports of the abuse, neglect,
4 or exploitation of an individual with a disability receiving
5 services:

6 (1) in a state supported living center or the ICF-MR
7 component of the Rio Grande State Center; or

8 (2) through a program providing services to that
9 person by contract with a state supported living center or the
10 ICF-MR component of the Rio Grande State Center.

11 (c) The department shall, within one hour of receiving a
12 report relating to an individual described by Subsection (b):

13 (1) notify the facility in which the individual is
14 receiving services of the allegations in the report;

15 (2) forward a copy of the initial intake report to the
16 commission's office of inspector general for evaluation and
17 investigation as provided by Subchapter D, Chapter 555, Health and
18 Safety Code; and

19 (3) place the department's investigation under this
20 chapter on hold.

21 (d) The department is required to proceed with and complete
22 an investigation of a report relating to an individual described by
23 Subsection (b) only if, not more than 24 hours after the department
24 forwards a report to the commission's office of inspector general,
25 the office of inspector general notifies the department that the
26 office of inspector general does not have cause to investigate a
27 possible criminal offense related to the report.

1 (e) The department may provide assistance, including
2 assistance in conducting interviews, to the commission's office of
3 inspector general when the office of inspector general conducts an
4 investigation of a report of abuse, neglect, or exploitation at a
5 state supported living center or the ICF-MR component of the Rio
6 Grande State Center.

7 (f) The department by rule shall define who is "an
8 individual with a disability receiving services."

9 (g) [~~(c)~~] In this section, "community center," "local
10 mental health authority," and "local mental retardation authority"
11 have the meanings assigned by Section 531.002, Health and Safety
12 Code.

13 SECTION 28. Section 48.254, Human Resources Code, is
14 amended to read as follows:

15 Sec. 48.254. FORWARDING OF CERTAIN REPORTS [~~COMPLETED~~
16 ~~INVESTIGATION REPORT~~]. In accordance with department rules, the
17 ~~[The]~~ department shall forward a copy of the initial intake report
18 and a copy of the completed investigation report relating to
19 alleged or suspected abuse, neglect, or exploitation to the
20 appropriate [~~a state mental health or mental retardation~~] facility,
21 [~~a~~] community center, [~~a~~] mental health authority, [~~a~~] mental
22 retardation authority, or [~~a~~] program providing mental health or
23 mental retardation services under contract with the [~~such a~~]
24 facility, community center, or authority[+]

25 ~~[(1) a copy of any report the department receives~~
26 ~~relating to alleged or suspected abuse, neglect, or exploitation of~~
27 ~~an individual receiving services from that facility, community~~

1 ~~center, authority, or program, and~~

2 ~~[(2) a copy of the department's investigation findings~~
3 ~~and report].~~

4 SECTION 29. Section 48.255, Human Resources Code, is
5 amended by amending Subsections (a), (b), (c), and (d) and adding
6 Subsection (c-1) to read as follows:

7 (a) The department, the Department of Aging and Disability
8 Services, and the [~~Texas~~] Department of State [~~Mental~~] Health
9 Services [~~and Mental Retardation~~] shall develop joint rules to
10 facilitate investigations in state mental health facilities and
11 state supported living centers [~~mental retardation facilities~~].

12 (b) The department, the Department of Aging and Disability
13 Services, and the [~~Texas~~] Department of State [~~Mental~~] Health
14 Services [~~and Mental Retardation~~] by joint rules shall establish
15 procedures for resolving disagreements between the department and
16 the [~~Texas~~] Department of Aging and Disability Services or the
17 Department of State [~~Mental~~] Health Services [~~and Mental~~
18 ~~Retardation~~] concerning the department's investigation findings.

19 (c) The department, the Department of Aging and Disability
20 Services, and the [~~Texas~~] Department of State [~~Mental~~] Health
21 Services [~~and Mental Retardation~~] shall develop joint rules to
22 facilitate investigations in community centers, mental health
23 authorities, and mental retardation authorities.

24 (c-1) The executive commissioner shall adopt rules
25 regarding investigations in a facility licensed under Chapter 252,
26 Health and Safety Code, to ensure that those investigations are as
27 consistent as practicable with other investigations conducted

1 under this subchapter.

2 (d) A confirmed investigation finding by the department may
3 not be changed by a superintendent of a state mental health [~~or~~
4 ~~mental retardation~~] facility, by a director of a state supported
5 living center, by a director of a community center, or by a mental
6 health authority or mental retardation authority.

7 SECTION 30. Section 48.256, Human Resources Code, is
8 amended to read as follows:

9 Sec. 48.256. SINGLE TRACKING SYSTEM FOR REPORTS AND
10 INVESTIGATIONS. (a) The department, ~~and~~ the [~~Texas~~]
11 Department of Aging and Disability Services, and the Department of
12 State [~~Mental~~] Health Services [~~and Mental Retardation~~] shall
13 jointly develop and implement a single system to track reports and
14 investigations under this subchapter [~~section~~].

15 (b) To facilitate implementation of the system, the
16 department, ~~and~~ the [~~Texas~~] Department of Aging and Disability
17 Services, and the Department of State [~~Mental~~] Health Services [~~and~~
18 ~~Mental Retardation~~] shall use appropriate methods of measuring the
19 number and outcome of reports and investigations under this
20 subchapter [~~section~~].

21 (c) The department shall inform the commission's office of
22 inspector general of the methods used to measure the number and
23 outcomes of reports and investigations under this section. The
24 commission's office of inspector general shall ensure that the same
25 methods are used for investigations performed by the office under
26 this chapter and Chapter 261, Family Code.

27 SECTION 31. Sections 48.301(a) and (c), Human Resources

1 Code, are amended to read as follows:

2 (a) If the department receives a report of suspected abuse,
3 neglect, or exploitation of [~~under this section relating to~~] an
4 elderly or disabled person, other than a disabled person receiving
5 services as described by Section 48.252, in a facility operated,
6 licensed, certified, or registered by a state agency [~~other than~~
7 ~~the Texas Department of Mental Health and Mental Retardation~~], the
8 department shall refer the report to that agency.

9 (c) Each state agency that may receive reports under this
10 section [~~, other than the Texas Department of Mental Health and~~
11 ~~Mental Retardation, that operates, licenses, certifies, or~~
12 ~~registers a facility in which elderly or disabled persons are~~
13 ~~located~~] shall adopt rules relating to the investigation and
14 resolution of reports received under this section.

15 SECTION 32. Sections 48.401(1) and (4), Human Resources
16 Code, are amended to read as follows:

17 (1) "Agency" means:
18 (A) an entity licensed under Chapter 142, Health
19 and Safety Code; [~~or~~]
20 (B) a person exempt from licensing under Section
21 142.003(a)(19), Health and Safety Code; or
22 (C) a facility licensed under Chapter 252, Health
23 and Safety Code.

24 (4) "Executive director" means the commissioner
25 [~~executive director~~] of the Department of Family and Protective
26 [~~and Regulatory~~] Services.

27 SECTION 33. Subchapter C, Chapter 161, Human Resources

1 Code, is amended by adding Section 161.0515 to read as follows:

2 Sec. 161.0515. ASSISTANT COMMISSIONER OF STATE SUPPORTED
3 LIVING CENTERS. (a) The commissioner shall employ an assistant
4 commissioner of state supported living centers. The assistant
5 commissioner must be selected based on education, training,
6 experience, and demonstrated ability.

7 (b) The assistant commissioner reports directly to the
8 commissioner.

9 (c) The assistant commissioner shall supervise the
10 operation of the state supported living centers. As part of that
11 duty, the assistant commissioner shall:

12 (1) verify that quality health and medical services
13 are being provided in state supported living centers;

14 (2) verify and certify employee qualifications for
15 employees of a state supported living center; and

16 (3) work with the commissioner to create
17 administrative guidelines for proper implementation of federal and
18 state statutory law and judicial decisions.

19 (d) The assistant commissioner shall coordinate with the
20 appropriate staff of the Department of State Health Services to
21 ensure that the ICF-MR component of the Rio Grande State Center
22 implements and enforces state law and rules that apply to the
23 operation of state supported living centers.

24 (e) The assistant commissioner shall consult with the
25 appropriate staff at the Department of State Health Services to
26 ensure that an individual with a dual diagnosis of mental illness
27 and mental retardation who is a resident of a state supported living

1 center or the ICF-MR component of the Rio Grande State Center is
2 provided with appropriate care and treatment.

3 SECTION 34. Subchapter D, Chapter 161, Human Resources
4 Code, is amended by adding Sections 161.076 and 161.077 to read as
5 follows:

6 Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. At
7 least every 12 months, the department shall conduct an unannounced
8 on-site survey in each group home, other than a foster home, at
9 which a Home and Community-based Services (HCS) provider provides
10 services.

11 Sec. 161.077. INVESTIGATION DATABASE. (a) The department,
12 in consultation with the Department of Family and Protective
13 Services and the commission's office of inspector general, shall
14 develop and maintain an electronic database to collect and analyze
15 information regarding the investigation and prevention of abuse,
16 neglect, and exploitation of individuals with mental retardation
17 who reside in a publicly or privately operated intermediate care
18 facility for persons with mental retardation or in a group home,
19 other than a foster home, at which a Home and Community-based
20 Services (HCS) provider provides services and the results of
21 regulatory investigations or surveys performed by the department
22 regarding those facilities or providers.

23 (b) The information collected in the database regarding
24 investigations must be detailed, be easily retrievable, and include
25 information relating to abuse, neglect, and exploitation
26 investigations performed by either department and the commission's
27 office of inspector general and regulatory investigations

1 performed by the department that are capable of being sorted by
2 home, provider, and facility.

3 (c) The database must facilitate the entry of required
4 information and the sharing of information between the department
5 and the Department of Family and Protective Services. At a minimum,
6 the database must include the following information regarding
7 investigations of abuse, neglect, or exploitation:

8 (1) the number of allegations of abuse, neglect, or
9 exploitation received relating to a facility or group home, other
10 than a foster home; and

11 (2) the number of allegations relating to a facility
12 or group home, other than a foster home, substantiated through an
13 investigation.

14 (d) Each allegation involving a unique individual in a
15 facility or group home, other than a foster home, is considered a
16 separate allegation for purposes of Subsection (c).

17 (e) The department shall ensure that information related to
18 findings concerning failure to comply with regulatory standards
19 directly related to the prevention of abuse, neglect, or
20 exploitation in a facility or group home, other than a foster home,
21 is collected and stored in the database and may be disaggregated by
22 home, provider, and facility.

23 (f) The department and the Department of Family and
24 Protective Services may not release or distribute information in
25 the database in a form that contains personally identifiable
26 information related to an individual in a facility or group home or
27 to a victim of abuse, neglect, or exploitation.

1 SECTION 35. Section 22.04(f), Penal Code, is amended to
2 read as follows:

3 (f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is
4 a felony of the third degree when the conduct is committed
5 intentionally or knowingly, except that an offense under Subsection
6 (a)(3) is a felony of the second degree when the conduct is
7 committed intentionally or knowingly and the victim is a disabled
8 individual residing in a center, as defined by Section 555.001,
9 Health and Safety Code, or in a facility licensed under Chapter 252,
10 Health and Safety Code, and the actor is an employee of the center
11 or facility whose employment involved providing direct care for the
12 victim. When the conduct is engaged in recklessly, the offense is
13 a state jail felony.

14 SECTION 36. (a) Sections 252.123, 252.124, 252.127,
15 252.128, 252.129, 252.130, and 252.131, Health and Safety Code, are
16 repealed.

17 (b) Section 5(c), Chapter 693 (S.B. 1248), Acts of the 75th
18 Legislature, Regular Session, 1997, is repealed.

19 SECTION 37. (a) Not later than December 1, 2009, the Health
20 and Human Services Commission, the Department of Family and
21 Protective Services, the Department of Aging and Disability
22 Services, the office of independent ombudsman for state supported
23 living centers, and the Health and Human Services Commission's
24 office of inspector general shall enter into a memorandum of
25 understanding as required by Section 48.007, Human Resources Code,
26 as added by this Act.

27 (b) Notwithstanding any other provision of this Act, the

1 changes in law made by this Act relating to the investigation of
2 suspected abuse, neglect, or exploitation involving a state
3 supported living center or the ICF-MR component of the Rio Grande
4 State Center apply only to a report of suspected abuse, neglect, or
5 exploitation involving a state supported living center or the
6 ICF-MR component of the Rio Grande State Center that is made on or
7 after January 1, 2010.

8 (c) Notwithstanding any other provision of this Act, the
9 changes in law made by this Act relating to the investigation of
10 suspected abuse, neglect, or exploitation involving a facility
11 licensed under Chapter 252, Health and Safety Code, apply only to a
12 report of suspected abuse, neglect, or exploitation involving a
13 facility licensed under Chapter 252, Health and Safety Code, that
14 is made on or after June 1, 2010.

15 SECTION 38. (a) The Interim Select Committee on Criminal
16 Commitments of Individuals with Mental Retardation is established
17 to study the criminal commitment process for individuals with
18 mental retardation who are found incompetent to stand trial or are
19 acquitted by reason of insanity. The committee's study must
20 include an analysis of:

21 (1) the advantages and disadvantages of the existing
22 system for criminal commitments of individuals with mental
23 retardation or individuals with a dual diagnosis of mental illness
24 and mental retardation who are found incompetent to stand trial or
25 are acquitted by reason of insanity;

26 (2) the number of individuals with mental retardation
27 who are criminally committed on an annual basis and the number of

1 individuals with mental retardation who are found to be violent or
2 dangerous through the criminal commitment process;

3 (3) whether the criminal commitment process should be
4 modified to provide for the commitment of certain individuals with
5 mental retardation who are found to be violent or dangerous to a
6 mental retardation facility instead of to a mental health facility;
7 and

8 (4) the costs associated with modifying the criminal
9 commitment process as described by Subdivision (3) of this
10 subsection.

11 (b) The committee is composed of six members as follows:

12 (1) the chairs of the following standing committees of
13 the house of representatives:

14 (A) criminal jurisprudence;

15 (B) human services; and

16 (C) public health; and

17 (2) the chairs of the following standing committees of
18 the senate:

19 (A) criminal justice;

20 (B) health and human services; and

21 (C) state affairs.

22 (c) The co-presiding officers of the committee are the chair
23 of the Senate Health and Human Services Committee and the chair of
24 the House Committee on Human Services.

25 (d) The committee has all other powers and duties provided
26 to a special or select committee by the rules of the senate and
27 house of representatives, by Subchapter B, Chapter 301, Government

1 Code, and by policies of the senate and house committees on
2 administration.

3 (e) From the contingent expense fund of the senate and the
4 contingent expense fund of the house of representatives equally,
5 the members of the committee are entitled to reimbursement for
6 expenses incurred in carrying out this section in accordance with
7 the rules of the senate and house of representatives and the
8 policies of the senate and house committees on administration.

9 (f) Not later than December 1, 2010, the committee shall
10 report the committee's findings and recommendations resulting from
11 the study to the governor, lieutenant governor, speaker of the
12 house of representatives, and members of the legislature.

13 SECTION 39. The Department of Aging and Disability Services
14 shall evaluate and determine the types of training that an employee
15 or owner of a facility licensed by the department under Chapter 252,
16 Health and Safety Code, or an employee or owner of a provider
17 licensed or certified by the department as a Section 1915(c) waiver
18 program provider needs and whether that training is available. Not
19 later than December 1, 2010, the department shall provide a report
20 to the governor, lieutenant governor, speaker of the house of
21 representatives, and chairs of the standing committees of the
22 senate and house of representatives with primary jurisdiction
23 regarding persons with mental retardation regarding:

24 (1) the types of training identified as necessary by
25 the department;

26 (2) the availability of that training in this state;

27 and

1 (3) recommended legislation or actions necessary to
2 ensure the appropriate training is received by the persons
3 described by this section.

4 SECTION 40. On the effective date of this Act, an individual
5 who is an employee of the Department of Aging and Disability
6 Services and who performs duties primarily related to consumer
7 rights and services at state schools is required to reapply for an
8 employment position with the department and may apply for a
9 position as an assistant independent ombudsman.

10 SECTION 41. (a) The commissioner of the Department of Aging
11 and Disability Services shall employ an assistant commissioner of
12 state supported living centers as soon as possible after the
13 effective date of Section 161.0515, Human Resources Code, as added
14 by this Act. On the date the assistant commissioner is employed, the
15 position of section director over state schools is eliminated.

16 (b) As soon as practicable after the effective date of this
17 Act, the Department of Aging and Disability Services shall develop
18 the database required by Section 161.077, Human Resources Code, as
19 added by this Act.

20 (c) Not later than December 1, 2009, the Health and Human
21 Services Commission's office of inspector general shall begin
22 employing and commissioning peace officers as required by Section
23 555.101, Health and Safety Code, as added by this Act.

24 (d) Not later than December 1, 2009, the executive
25 commissioner shall contract for mortality review services as
26 required by Subchapter U, Chapter 531, Government Code, as added by
27 this Act.

1 (e) Not later than September 1, 2009, the governor shall
2 appoint the independent ombudsman as required by Section 555.053,
3 Health and Safety Code, as added by this Act.

4 (f) Not later than September 1, 2010, the executive
5 commissioner of the Health and Human Services Commission shall
6 require the Department of Aging and Disability Services, and any
7 facility the department licenses under Chapter 252, Health and
8 Safety Code, to conduct a criminal history check on each employee
9 and shall require the department or licensed facility to discharge
10 any person whose criminal history check reveals a conviction of an
11 offense that bars employment under Chapter 250, Health and Safety
12 Code.

13 (g) Not later than January 1, 2010, the Department of Aging
14 and Disability Services shall develop the training required by
15 Section 555.024, Health and Safety Code, as added by this Act.

16 (h) The Department of Aging and Disability Services shall
17 ensure that each center employee and direct care employee receives
18 the training required by Section 555.024, Health and Safety Code,
19 as added by this Act, regardless of when the employee was hired, not
20 later than September 1, 2010.

21 (i) Not later than September 1, 2011, the Department of
22 Aging and Disability Services shall begin operating the Mexia State
23 Supported Living Center as the forensic state supported living
24 center as required by Section 555.002, Health and Safety Code, as
25 added by this Act.

26 SECTION 42. (a) Not later than September 1, 2011, the
27 Department of Aging and Disability Services shall ensure that an

1 interdisciplinary team has completed a determination in the manner
2 provided by Section 555.003, Health and Safety Code, as added by
3 this Act, for each alleged offender resident residing in a state
4 supported living center or the ICF-MR component of the Rio Grande
5 State Center on the effective date of this Act.

6 (b) An alleged offender resident for whom a determination is
7 completed in accordance with Subsection (a) of this section and who
8 is classified as a high-risk alleged offender resident is entitled
9 to:

10 (1) an administrative hearing and appeal provided by
11 Section 555.003, Health and Safety Code, as added by this Act,
12 regarding that determination and classification; and

13 (2) an administrative hearing regarding the resident's
14 proposed transfer to the forensic state supported living center as
15 provided by Section 594.014, Health and Safety Code.

16 (c) The Department of Aging and Disability Services may not
17 transfer an alleged offender resident residing in a state supported
18 living center or the ICF-MR component of the Rio Grande State Center
19 on the effective date of this Act to the forensic state supported
20 living center while the resident is pursuing the administrative
21 remedies listed in Subsection (b) of this section.

22 (d) Except as provided by Subsection (c) of this section,
23 the department shall transfer an alleged offender resident
24 classified as a high-risk alleged offender resident to the forensic
25 state supported living center on the date the Mexia State Supported
26 Living Center begins operating as the forensic state supported
27 living center, or as soon as possible after that date.

1 (e) This section expires September 1, 2013.

2 SECTION 43. (a) The changes in law made by this Act to
3 Section 261.109, Family Code, Section 48.052, Human Resources Code,
4 and Section 22.04, Penal Code, apply only to an offense committed on
5 or after the effective date of this Act. An offense committed
6 before the effective date of this Act is governed by the law in
7 effect when the offense was committed, and the former law is
8 continued in effect for that purpose. For purposes of this section,
9 an offense was committed before the effective date of this Act if
10 any element of the offense occurred before that date.

11 (b) Section 411.1144, Government Code, as added by this Act,
12 and Section 555.021, Health and Safety Code, as added by this Act,
13 apply only to background and criminal history checks performed on
14 or after the effective date of this Act.

15 (c) The change in law made by Section 551.022(e), Health and
16 Safety Code, as added by this Act, and the change in law made by
17 Section 551.0225, Health and Safety Code, as added by this Act,
18 apply to the dismissal of an officer, teacher, or other employee of
19 a state developmental center hired before, on, or after the
20 effective date of this Act.

21 SECTION 44. If before implementing any provision of this
22 Act a state agency determines that a waiver or authorization from a
23 federal agency is necessary for implementation of that provision,
24 the agency affected by the provision shall request the waiver or
25 authorization and may delay implementing that provision until the
26 waiver or authorization is granted.

27 SECTION 45. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2009.